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EPA Issues New Proposed PFA Drinking Water Regulations

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In a highly anticipated move, the Environmental Protection Agency (EPA) just announced proposed regulations under the Safe Drinking Water Act (SDWA) setting express limits on the amounts of Per- and Polyfluoroalkyl substances (PFAS) that can be present in public drinking water. Under the proposed regulations, entities in charge of public drinking water systems will be required to regularly monitor and report PFAS in drinking water systems and ensure that the PFAS meet the new regulatory thresholds.

PFAS are so called "forever chemicals" and have been at the heart of significant litigation for claims of health and environmental damages against companies such as DuPont, Chemguard, National Foam, Dynax, and others. Since 2005, more than 6,400 lawsuits have been filed against companies involved in each stage of manufacturing. The claims have included personal injury, water provider claims from utilities required to clean up PFAS in drinking water, property damage, state government claims for natural resource damages, and medical monitoring cases. PFAS has even made sports news with a new report linking the cancer deaths of six former Philadelphia Phillies baseball players to the use of artificial turf containing PFAS in Veterans Stadium.

New Safe Drinking Water Act Proposed Regulations

With this background, the EPA has been active in proposing new regulations, including the newly released proposed new regulation under the Safe Drinking Water Act (SWDA). Under this proposal, the EPA will regulate the following PFAS as contaminants under the SWDA: perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS), perfluorohexane sulfonic acid (PFHxS), hexafluoropropylene oxide dimer acid (HFPO-DA) and its ammonium salt (also known as GenX chemicals), perfluorononanoic acid (PFNA), and perfluorobutane sulfonic acid (PFBS).

These regulations include health-based Maximum Contaminant Level Goals (MCLGs) for these PFAS as well as specific reporting and monitoring requirements for anyone responsible for public drinking water. As the EPA stated in its pre-publication notice:

PFAS are a large family of synthetic chemicals that have been in use since the 1940s. Many of these compounds have unique physical and chemical properties that make them highly stable and resistant to degradation in the environment—colloquially termed "forever chemicals." People can be exposed to PFAS through certain consumer products, occupational contact, and/or by consuming food and drinking water that contains PFAS.

Under the new regulations, the EPA has proposed the following MCLGs and Maximum Contaminant Levels (MCLs). The MCLs proposed are the enforceable limits per the EPA:

Compound	Proposed MCLG	Proposed MCL (enforceable levels)
PFOA	Zero	4.0 ng/L or parts per trillion

		(ppt)
PFOS	Zero	4.0 ng/L or ppt
PFNA	1.0 (unitless) Hazard Index	1.0 (unitless) Hazard Index
PFHxS		
PFBS		
HFPO-DA (GenX Chemicals)		

Source

For the Hazard Index limits for PFOS, PFNA, PFHxS, PFBS, and HFPO-DA, the EPA has said:

The HI is a commonly used risk management approach for mixtures of chemicals . . . In this approach, a ratio called a hazard quotient (HQ) is calculated for each of the four PFAS . . . by dividing an exposure metric, in this case, the measured level of each of the four PFAS in the drinking water, by a health reference value for that particular PFAS. For health reference values . . . EPA is setting Health Based Water Concentrations as follows: 9.0 ppt for PFHxS, 10.0 ppt for HFPO-DA; 10.0 ppt for PFNA; and 2000 ppt for PFBS . . . The individual PFAS ratios . . . are then summed across the mixture to yield the HI. If the resulting HI is greater than one (1.0), then the exposure metric is greater than the health metric and potential risk is indicated.

As already noted, the EPA is not only setting limits under these regulations but also including specific monitoring, reporting, and – to the extent applicable – reduction of PFAS requirements. As part of the reporting, the proposed regulations will require public notice of the levels of the regulated PFAS in a drinking water system. Those responsible for implicated water systems with PFAS levels that exceed the proposed MCLs will also be required to take action to provide safe and reliable drinking water by installing water treatment systems (such as activated carbon, anion exchange (AIX), or high-pressure membrane technologies) or find a new and uncontaminated water source.

Key Takeaways

While these regulations are not yet approved and have to go through the notice and comment stages (including a public hearing, currently scheduled for May 4, 2023), it is clear that the EPA is taking new and aggressive action to regulate PFAS in public drinking water systems. These regulations will create new requirements for those responsible for public drinking water systems and, in many instances, will require third-party vendors and contractors to help both the public and private utilities comply with the new regulations.

We will continue to monitor these proposed regulations.

If you have any questions about this topic, please contact Adam W. Green or Kat Statman.